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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re E.T., a Person Coming Under the
Juvenile Court Law.

B211012
(Los Angeles County Super. Ct.
No. CK73483)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.T.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline Lewis, Juvenile Court Referee. Affirmed.

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

L.T. (father) appeals from the order of September 18, 2008, declaring his daughter a dependent of the court under Welfare and Institutions Code section 300.¹ He contends substantial evidence does not support the findings and dependency judgment. We hold substantial evidence supports the findings and the dependency judgment was not an abuse of discretion. Accordingly, we affirm the judgment.

STATEMENT OF FACTS AND PROCEDURE

E. was born in 2006 to I.C. (mother)² and father, who were not married but lived together.³ Prior to moving in with mother in 2005, father attempted by use of force to insert his erect penis into his ten-year-old cousin's vagina on several occasions in 2003.⁴ He threatened the cousin in order to prevent her from disclosing the abuse.

Mother's three daughters from a previous relationship lived with the family. Father spent family money drinking with his friends. Mother often argued loudly with father and yelled at the children.

On July 2, 2007, mother disciplined E.'s youngest half-sibling, who was then seven years old, for taking too long to prepare a baby bottle. She called the child stupid and dumb. Holding E. with one hand, she hit the half-sibling with her other hand, which was closed to make a fist. The child began trembling with fear, then dropped to the floor and curled up in a fetal position. Mother kicked her 20 to 30 times in the thigh and abdomen. Mother was so angry and out of control that the presence of her landlady's

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² Mother did not appeal.

³ The dependency court found father to be E.'s presumed father.

⁴ He was taken into custody for attempted forcible rape and lewd act against a child (Pen. Code, §§ 664, 261, subd. (a), 288, subd. (b)(1)). The District Attorney rejected the charges for lack of evidence.

relative (Idalia) and the fact that she was holding E. did not deter her. She ignored Idalia's pleas and only stopped when Idalia called the police. Mother was convicted of child cruelty and ordered to stay away from the child for a year.

Although father denied sexually molesting his cousin and mother minimized physically abusing the half-sibling, the family agreed in October 2007 to comply with a voluntary family maintenance plan proposed by the Department of Children and Family Services to insure E.'s safety in the family home.⁵ The plan left E. in the parents' custody under Department supervision, required father to complete a sexual abuse program, and required mother to participate in parenting counseling. In October 2007 and April 2008, the Department gave father referrals to enroll in parenting and sexual abuse counseling services. Mother was not to let father be alone with E.

The voluntary family maintenance plan was not successful. Father did not enroll in counseling and refused to contact the social worker. A team decision meeting was held with the parents at the end of May 2008 to work out a plan to keep E. safe from sexual and physical abuse. Under the plan, the Department would file a nondetained petition and father would enroll in parenting and sexual abuse counseling and maintain contact with the social worker. Father was given further counseling referrals. He enrolled in a parenting program, but not in sexual abuse counseling.

A nondetained petition was filed July 1, 2008. However, on July 14, 2008, upon finding that remaining in the home of the parents was contrary to the child's welfare, the dependency court ordered E. detained from the parents. (See § 319, subd. (d).)

At the jurisdictional hearing, the dependency court sustained allegations under section 300, subdivisions (a) and (d) and declared E. a dependent of the court.⁶ The

⁵ The family court awarded custody of mother's other three children to their father.

⁶ The dependency court sustained an allegation under section 300, subdivision (a) that, on July 2, 2007, mother physically abused E.'s half-sibling, which placed E. at risk of physical abuse. The dependency court sustained an allegation under section 300, subdivision (d) that, on July 21, 2003, and prior occasions, father sexually abused his

dependency court found the testimony by father's cousin about the sexual abuse very credible. Citing *In re P.A.* (2006) 144 Cal.App.4th 1339, 1346-1347 for the proposition that "[a]bhorrent sexual behavior by a parent places the victim's sibling who remains in the home at risk of abhorrent sexual behaviors," the dependency court found that father's attempts to molest his cousin was abhorrent sexual behavior, placing E. at risk. Regarding mother's physical abuse of the half-sibling, the dependency court stated: "I'm incredibly concerned that the description given by the person who witnessed this indicated that[,] before any hitting or kicking started[,] [the half-sibling] dropped to the floor trembling in fear and curled herself into a fetal position. And I find it incredibly difficult to believe that that kind of fear would be based on it never having happened before."

After hearing evidence on mother's rehabilitation, the dependency court found mother had made progress, but needed to complete parenting counseling. Custody was not taken from the parents. In father's case, custody was conditional on his participating in sexual abuse counseling. The dependency court ordered family maintenance services.

cousin, age 10, in the home by attempting to insert his penis into her vagina, which placed E. at risk for sexual abuse.

DISCUSSION

Substantial Evidence Supports the Findings

Section 300, Subdivision (d)

Father does not challenge the finding that father sexually molested his cousin,⁷ but he contends substantial evidence does not support the finding that E. was at risk of sexual abuse under section 300, subdivision (d). We disagree with the contention.

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

Section 300, subdivision (d) describes a child who “has been sexually abused, or there is a substantial risk that the child will be sexually abused . . . by his . . . parent.” “While evidence of past conduct may be probative of current conditions, the question

⁷ Nonetheless, father denies the finding is true and points to matters in the record that he asserts support his denial. We reject father’s characterization of the record. The fact father was not prosecuted for attempted forcible rape does not establish he did not commit attempted forcible rape. (See *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562-563.) The record does not state that the cousin’s therapist concluded the cousin made up the story. The record does not establish that the cousin copied someone else’s story of abuse. The record does not establish that the social worker and the therapist concluded the cousin made up the story to get attention. The dependency court found the cousin’s testimony that father tried to forcibly rape her very credible and found the Department’s investigation of the case very shoddy.

under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm. [Citations.] Thus the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’ [Citations.]” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 [§ 300, subd. (b)].)

Father contends the record lacks evidence of a substantial risk father will sexually abuse E. To the extent father contends that there must be proof father is likely to molest E. now, when she is a toddler, as opposed to when she is an older child, father is mistaken. (See § 300, subd. (d).) *In re Rocco M.* does not stand for father’s proposition. (See *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) In any event, the dependency court did not find, as father mistakenly contends, that there will be no risk to E. until she was 10 years old. The dependency court found E. was at current risk from father’s abhorrent sexual behavior. To the extent father argues his repeated attempts to forcibly rape his cousin was a one-time event in the past and not predictive of his future conduct, we conclude that father’s denial of his role and failure to participate in sexual abuse counseling is substantial evidence he is not rehabilitated and likely to offend again.

Section 300, Subdivision (b)

Father contends substantial evidence does not support the finding E. was at risk of physical abuse under section 300, subdivision (a) due to mother’s abuse of E.’s half-sibling. The sustained allegation does not refer to any conduct by father or state E. is at risk of harm from father. Accordingly, the sustained finding under section 300, subdivision (a) does not affect father; he has no standing to object to it. (Code Civ. Proc., § 902 [only an aggrieved party may appeal]; *In re D.S.* (2007) 156 Cal.App.4th 671, 673-674 [father has no standing to challenge denial of mother’s section 388 petition]; *In re Nachelle S.* (1996) 41 Cal.App.4th 1557, 1560 [parent has no standing to raise child’s right to sibling visitation]; *In re Gary P.* (1995) 40 Cal.App.4th 875, 876-877 [mother has

no standing to challenge order terminating parental rights on ground it would terminate grandparent visitation].)

In any event, as E. is subject to dependency court jurisdiction under section 300, subdivision (d), we need not decide whether jurisdiction is supported by the finding under section 300, subdivision (a). “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

Assuming father has standing to raise the issue, we hold substantial evidence supports the finding. It is reasonable to infer from the fear the child displayed when mother began to attack her that this was not a one-time aberration, as father suggests. The circumstances reasonably indicate mother had physically abused the child in the past. Mother exhibited an extreme loss of control and great anger in inflicting the abuse in front of an outsider and persisting in the face of the outsider’s pleas to stop, and endangered E., whom she was holding, in the process. As a result of this incident, mother was convicted of child cruelty and ordered to have no contact with the child. Mother participated in parenting counseling for about nine months but had not completed the program. The foregoing is substantial evidence there was still a substantial risk mother would physically abuse E.

The Dependency Court Did Not Abuse its Discretion Declaring E. a Dependent of the Court

Father contends substantial evidence does not support the judgment declaring E. a dependent of the court, because there was no substantial evidence dependency court supervision was necessary to protect her. We reject the contention.

Section 360, subdivision (d) provides, “If the court finds that the child is a person described by Section 300, it may order and adjudge the child to be a dependent child of the court.”

As section 360 confers discretionary authority on the dependency court to determine the disposition of the child, we review the exercise of discretion for abuse of discretion. (See *In re Summer H.* (2006) 139 Cal.App.4th 1315, 1324.) “The juvenile court’s broad discretion to determine what best serves a child’s interests will not be reversed absent a clear abuse of discretion. [Citation.] As our Supreme Court has recently noted, the scope of that discretion is broad: ‘This determination was committed to the sound discretion of the juvenile court, and the trial court’s ruling should not be disturbed on appeal unless an abuse of discretion is clearly established. [Citations.] . . . [W]e have recently warned: [“]The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’” [Citations.]’ (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)” (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1227-1228.) Where substantial evidence supports the order, there is no abuse of discretion. (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839.)

Father forcibly attempted to rape another child on more than one occasion, denied his conduct, and was not rehabilitated. Mother physically abused another child in an exhibition of an extreme loss of control. By carrying E. in her arm while inflicting the abuse, she endangered E. as well. Mother and father frequently argued, and mother yelled at the children. Mother had not completed her rehabilitation program. Prior voluntary maintenance services failed to ensure E.’s safety in the home. This is substantial evidence supporting the dependency court’s exercise of discretion in favor of a period of court supervision by declaring E. a dependent of the court and ordering the parents to complete rehabilitation services.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.